



Town of Brookline

Massachusetts

BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 080035

Petitioner, Samuel and Rebecca Tolhoff, applied to the Building Commissioner for permission to construct an addition per plans at 43 Somerset Road. The application was denied and an appeal was taken to this Board.

On August 7, 2008, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed September 18, 2008 at 7:00 P.M. in the Selectmen's Hearing Room on the sixth floor of Town Hall as the time and place of a hearing on the appeal. The September 18, 2008 hearing was continued to October 2, 2008 at the request of the Petitioner and with the consent of the Board. Notice of the hearing was mailed to the petitioner, to its attorney, to the owners of properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearings were published on August 28, 2008 and September 4, 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

**TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING**

PETITIONER: Tolkoff Samuel W., Tolkoff Rebecca

LOCATION OF PREMISES: 43 Somerset Rd, Brkl

DATE OF HEARING: 10/02/08

TIME OF HEARING: 07:30 p.m.

PLACE OF HEARING: Main Library, 2nd floor

A public hearing will be held for a variance and/or special permit from

5.09.2.j; Exterior addition, Far relief, Special Permit
Required

5.20; Floor Area Ratio, Variance Required

5.22.3.c; Exceptions to Maximum Floor Area Ratio
Regulations for Residential Units; Special Permit
Required

5.22.2.b; Exceptions to Floor Area Ratio for
residential Units, By Right.

5.22.3.b.1.b; Exceeding Maximum Gross Floor Area for
Residential Units, Special Permit required.

5.43; Exceptions to Yard and Setback Regulations, Special
Permit Required

5.60; Side Yard Requirements, Variance Required

6.04; Design of All Off-Street Parking Facilities:

6.04.5.c.1 Front Yard Setback

6.04.5.c.2 Side Yard Setback

6.04.12; Waiver of Dimensional Requirements, Special Permit
Required.

8.02.2; Alteration or Extension, Special Permit
Required

Of the Zoning By-Law to
Construct an addition per plans

at 43 SOMERSET RD BRKL

Said premises located in a S-7 (Single Family) district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued or the date and time of any hearing may be directed to the Zoning Administrator at 617-730-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for the effective communication in programs and services of the Town of Brookline are invited to make their needs known

to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2330; TDD (617) 730-2327.

Enid Starr
Jesse Geller
Robert DeVries
Board of Appeals

On October 2, 2008, at the time and place specified in the notice a public hearing was held by this Board. Present were Chairman Jesse Geller, and Board Members Jonathan E. Book and Christina Wolfe.

Samuel and Rebecca Tolkoff, the owners of the property at 43 Somerset Road, were represented by Attorney Kenneth B. Hoffman of Holland & Knight LLP, 10 St. James Avenue, Boston, MA 02116. 43 Somerset Road is a two-and-half story, single family dwelling located near the intersection of Somerset Road and Welland Road. The property has a detached single-car garage located in the rear corner of the lot, with a driveway to the west of the dwelling. The surrounding neighborhood consists primarily of single-family residential properties. The existing garage occupies a portion of the rear yard, thus eliminating potential usable open space at the rear of the dwelling. The "front" door is on the side facing the driveway and as a consequence persons stepping out of the entrance to the house find themselves in a path of vehicles using the driveway. Furthermore, the house does not present an entrance to the street and thus the house is sideways on the lot, which is out of character with the other houses on the street and deprives the home of an architectural focal point to the public sidewalk.

Mr. Hoffman introduced the applicant's proposed improvements to 43 Somerset Road. Prior to occupying the property, the Tolkoffs propose to address the architectural anomalies described above which create safety concerns, internal circulation difficulties, loss of available landscaped open space and poor orientation of the house on the lot. To correct or address these problems, the Tolkoffs propose to demolish the existing detached garage and construct a new

attached garage and mudroom. The 13'1"-wide garage/mudroom addition will be set back from the dwelling's main façade and extend 13'11" toward the rear on the dwelling's western side. The garage would have a shed roof on the front, with a gable roof at the rear. The existing driveway would be used to access the garage.

The new rear addition would be located on the eastern corner of the dwelling and provide for additional storage in the basement, an expanded kitchen on the first floor, and a master bedroom on the second floor. The addition would be 7'1" deep by 15'5" wide with a gable roof with slopes matching the existing dwelling. A new uncovered stair from the first floor down to the basement would be constructed next to the expanded kitchen. Other aspects of the proposal include a new open front porch and a new retaining wall next to the existing driveway.

The original plan submitted to the Building Department, upon which the Building Commissioner issued a denial letter, required variances because the floor area ratio was slightly over the floor area which could be authorized by special permit. The applicants' architect revised the plans, including the elevations, to bring the square footage and thus the floor area ratio within the special permit parameters of the Zoning By-law. Accordingly, the plans presented to the Board of Appeals are the revised plans as prepared by Ellsworth Associates dated October 2, 2008.

Accordingly, the relief required by special permit is as follows:

Section 5.09.2.j – Design Review: Any exterior addition for which a special permit is requested pursuant to *Section 5.22 (Exceptions to Maximum Floor Area Ratio Regulations)* requires a special permit subject to the design review standards listed under *Section 5.09.4(a-l)*. The most relevant sections of the design review standards are described below:

- *Preservation of Trees and Landscape:* The proposed addition would be located where there is currently a driveway, and no significant landscape features that cannot be replaced are expected to be removed with this proposal.
- *Relation of Buildings to Environment:* The proposed additions are not expected to cause shadowing on neighboring lots or require dramatic changes to the lot's terrain. A new retaining wall is proposed to be constructed on the other side of the existing driveway.

- *Relation of Buildings to the Form of the Streetscape and Neighborhood:* The proposed additions are consistent in style with the existing dwelling as well as with neighboring dwellings. The proposal is not expected to change the overall character of the existing dwelling, although the new front porch will help orient the house towards the street.
- *Open Space:* The proposal will allow for the entire rear yard to be used as open space by the residents.
- *Circulation:* The proposal will retain the existing parking drive, but will require cars to park closer to the front yard setback in a tandem arrangement.

Section 5.22.2.b – Exceptions to Maximum Floor Area Ratio Regulations for Residential Units: Conversions of basements into habitable space shall be allowed as-of-right as long as the total resulting gross floor area of the building after conversion does not exceed 150 percent of the total permitted FAR. The basement area of the dwelling was finished by a prior owner in 2002, building permit number BL#0201023.

Section 5.22.3.b.1.b – Exceptions to Maximum Floor Area Ratio Regulations for Residential Units: Exterior additions that are less than or equal to 20 percent of the permitted gross floor area are allowed by special permit for dwellings in all S districts.

FLOOR AREA

	Required	Existing w/o Basement	Existing w/ Basement*	Proposed	Finding
Floor Area Ratio (% of allowed)	0.35 100%	0.31 89%	0.39 111%	0.45 129%	Variance / Special permit**
Floor Area (s.f.)	2,157.4	1,921	2,433	2,799	

* Under **Section 5.22.2.b**, basements may be converted into habitable space as-of-right up to 150% of total permitted gross floor area. This basement was finished in 2002 by a prior owner.

** Under **Section 5.22.3.b.1.b**, exterior additions may be constructed up to 120% of total permitted gross floor area by special permit. The applicant originally proposed 366 s.f. of new floor area in two external additions, which would be 106% of total allowed gross floor area if the basement was not previously finished. The applicant has revised the plans of the proposal to ensure the additions are less than 350 s.f. to comply with **Section 5.22.3.c** (see below).

Section 5.22.3.c – Exceptions to Maximum Floor Area Ratio Regulations for Residential Units: The applicant has modified the proposal to remove at least 16 s.f. of floor area from the external additions, so that the proposal would qualify for a special permit under this section, which limits external additions to less than 350 s.f. but allows up to 150 percent of total permitted gross floor area.

Section 5.60 – Side Yard Requirements

Section 6.04 – Design of All Off-Street Parking Facilities:

- .5.c.1 – *Front yard setback:* By altering the location of the garage, a tandem parking arrangement will result in one vehicle partially protruding into the front yard setback.
- .5.c.2 – *Side yard setback*
- .12 – *Waiver of dimensional requirements*

Dimensional Requirements	Required/ Allowed	Existing	Proposed	Relief
West Side Yard Setback	7.5 feet	16.3 feet	3.3 feet	Special Permit †
East Side Yard Setback	7.5 feet	8.5 feet	8.5 feet	Complies
Front Yard Setback (parking)	20 feet	n/a	13.9 feet (est.)	Special Permit ‡
Side Yard Setback (parking)	5 feet	7 feet (est.)	3.3 feet	Special Permit ‡

† Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The applicant has been working with his neighbor to determine the most appropriate counterbalancing amenity, including repairs to the existing retaining wall near the side lot line and/or new landscaping along that edge.

‡ Under **Section 6.04.12**, the Board of Appeals may allow the substitution of other dimensional requirements when new parking facilities are being installed to serve existing structures.

Section 8.02.2 – Alteration or Extension

A special permit is required to alter or extend a non-conforming structure.

The drawings, elevations and site plan were presented to the Board by the project architect, Ellsworth Associates, 267 Norfolk Street, Cambridge, MA 02139. Nathan Richardson of Ellsworth Associates presented the site plan which was prepared by Everett M. Brooks Company, Surveyors and Engineers, of 49 Lexington Street, West Newton, MA 02465. The Brooks's plan showing the proposed additions was dated July 1, 2008, with a revision July 22, 2008. The plans presented by Mr. Richardson were dated July 22, 2008, except where revisions dated October 2, 2008 are noted. Mr. Richardson described the changes to the layout which reduced the floor area calculations to be within the special permit requirements. He responded to questions of the Board regarding the layout of the basement and the location of the driveway in relation to the setbacks. Mr. Richardson also described the landscape plan which represented counterbalancing amenities for the relief required for the setbacks.

The Board took note of comment from Charlie Walsh of 39 Somerset Road, a prior owner or the subject property. Mr. Walsh described the renovations requested by the Tolkoffs as

entirely consistent with the neighborhood. Mr. Walsh indicated that had he kept ownership of the house, he had plans for similar renovations to remedy some of the problems described in relation to the layout of the house, the location of the garage and the orientation of the front door to the side of the property.

Daniel and Marguerite Miranda of 40 Somerset Road, neighbors to this property were fully supportive and spoke highly of the Tolkoffs and their plans to renovate the vacant single family dwelling. Axel Hoffer of 14 Welland Road, a direct abutter whose property is most affected by the proposed renovations indicated he had concerns regarding location of the new garage so close to the side yard but that the petitioners have agreed to satisfactory remediation and he is now in full support of the proposal; noting that the petitioner had agreed to landscaping plans particularly along the boundary line of the property abutting Mr. Hoffer's residence, which landscaping is intended to provide some additional privacy and to repair or shore up the retaining wall currently separating the grade differential between 14 Welland and 43 Somerset.

No one spoke in opposition.

Lara Curtis of the Planning Department presented the Planning Board's recommendations as contained in its report of September 18, 2008. These recommendations reflect the unanimous support of the Planning Board. She reported to the Board that:

The Planning Board is not opposed to this proposal for a new attached garage and addition for 43 Somerset Road. The proposal provides a greater rear yard setback, and the garage addition has been located next to an existing parking area on the neighboring property. With landscaping, the impact from the garage addition can be effectively minimized. Both additions have been designed to integrate well with the existing building. The Planning Board is pleased the applicant revised the plans so that only a special permit is required for the proposal. The Planning Board does think the additional floor area requested is reasonable and in keeping with the size and style of similar structures in the neighborhood.

Due to the proximity of the addition to a retaining wall near the side property line, a counterbalancing amenity should include shoring up and repairing the retaining wall along the side property line, and if possible, installing landscaping to help

screen the new addition and parking drive. Therefore, a detailed site and landscaping plan should be provided.

Therefore, the Planning Board recommends approval of the proposal and the submitted floor plans, titled "43 Somerset Road, Brookline, MA," prepared by Ellsworth Associates and last dated 10/2/08 where noted, and the submitted elevations also prepared by Ellsworth Associates and last dated 10/2/08 where noted, and the proposed site plan prepared by Bruce Bradford, last dated 7/22/08, subject to the following conditions:

1. Prior to the issuance of a building permit, final elevations shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to issuance of a building permit, final floor plans and a certified floor area analysis shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, a final site and landscaping plan, indicating all retaining walls and counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
4. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the additions, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Michael Shepard, the Building Commissioner, informed the Board that the petitioners had been working with the Building Department for quite some time in designing a plan that satisfied the Zoning By-law requirements through special permits and that the Building Department was fully supportive of the relief requested and of the conditions recommended by the Planning Board.

The Board then discussed the zoning relief required. Board Member Jonathan Book inquired of the Building Commissioner and the petitioner's lawyer, Mr. Hoffman, whether Section 5.22.3.c of the Zoning By-Law precludes granting of a Special Permit under Section

5.22.3.b as a result of the prior basement expansion. Mr. Shepard and Mr. Hoffman responded that the so-called “double-dip” prohibition is not applicable since prior expansion in the basement was “as of right” and therefore not within the intent of the Section’s proscription. Mr. Book further inquired whether the substitution of dimensional requirements pursuant to Section 6.04.12 of the Zoning By-Law is necessary to permit the installation of some or all of the off-street parking spaces that would be required for a similar new building as required by the Section of the By-Law. Mr. Hoffman responded that no other location was available on the property for the garage. The Board was satisfied that the application was appropriate for special permit relief based upon the revised architectural plans and that a landscape plan will be submitted to and approved by the Assistant Director for Regulatory Planning in satisfaction of the requirement for counterbalancing amenities. Based on the plans and evidence presented, the Board of Appeals finds that the conditions necessary for relief applied for by the petitioner from the provisions of the Zoning By-Law under Section 5.22 (Exceptions to Maximum F.A.R. Regulations for Residential Units), Section 5.09 (Design Review), Section 9.05(Conditions for Approval of Special Permit), Section 5.43 (Exceptions to Yard and Setback Requirements) and Section 6.04.12 of the Zoning By-Law have been established, subject to satisfaction of the conditions provided below. With regard specifically to Section 9.05 of the Zoning By-law, the Board finds the following: (i) that the site is an appropriate location for the single family residential dwelling, (ii) that the use as developed will not adversely affect the neighborhood, (iii) there will be no nuisance or serious hazard to vehicles or pedestrians, (iv) that adequate and appropriate facilities will be provided for the proper operation for the continued use of the premises as a single family home, and (v) the development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people. Accordingly, the Board of

Appeals unanimously grants the special permits required based upon the plans of Ellsworth Associates Architects referenced above, revised where noted on October 2, 2008, subject to the following conditions:

1. Prior to the issuance of a building permit, final elevations shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to issuance of a building permit, final floor plans and a certified floor area analysis shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, a final site and landscaping plan, indicating all retaining walls and counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
4. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the additions, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.
5. Prior to issuance of a building permit, the applicant shall submit a drainage plan, relative to the existing retaining wall and drainage on site, to the Engineering Department for review and approval.

Unanimous Decision
Of the Board of Appeals

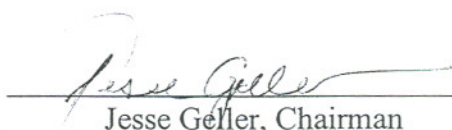
Filing Date: October 17, 2008

A true copy

ATTEST



Patrick J. Ward
Clerk, Board of Appeals


Jesse Geller, Chairman